

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
JAY T. RAMSEY, Cal. Bar No. 273160  
3 1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067-6055  
4 Telephone: 310.228.3700  
Facsimile: 310.228.3701  
5 jramsey@sheppardmullin.com

6 KLEIN MOYNIHAN TURCO LLP  
NEIL E. ASNEN (*pro hac vice to be filed*)  
7 450 Seventh Avenue, 40th Floor  
New York, New York 10123  
8 Telephone: 212-246-0900  
Facsimile: 212-216-9559  
9 nasnen@kleinmoynihan.com

10 Attorneys for Defendant  
DIGITAL MEDIA SOLUTIONS LLC  
11

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14

15 MARTA GREENBERG, an individual,  
JOHN JUDGE, an individual,  
16 KAREN MANDEL, an individual,  
ANDREW MONROE, an individual, and  
17 KATIE VAN CLEAVE an individual;

18 Plaintiffs,

19 v.

20 DIGITAL MEDIA SOLUTIONS LLC, a  
Delaware limited liability company, BILCO  
21 MEDIA INC., a business entity of unknown  
organization, ALLAN HUGHES, an individual,  
22 and DOES 1-100,

23 Defendants.  
24  
25  
26  
27  
28

Case No.: 3:19-cv-355

**NOTICE OF REMOVAL OF STATE  
COURT CIVIL ACTION**

Removed from the Superior Court of the State  
of California, San Francisco County, Case No.  
CGC-18-572010

Action Filed: December 12, 2018

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendant Digital Media Solutions, Inc. (“DMS”) hereby removes this matter from the Superior Court of the State of California for the County of San Francisco to the United States District Court for the Northern District of California. In support of removing this action, DMS states as follows:

**I. BACKGROUND**

1. On December 12, 2018, Plaintiffs Marta Greenberg, John Judge, Karen Mandel, Andrew Monroe and Katie Van Cleave commenced a civil action in the Superior Court of the State of California for the County of San Francisco captioned *Marta Greenberg, et al. v. Digital Media Solutions LLC, et al.*, Case No. CGC-18-572010 (“Complaint”). A true and correct copy of the documents served on Defendant, which includes a copy of the Complaint, is attached hereto as

**Exhibit A.**

2. Defendant was served with this pleading on December 21, 2018.

3. Defendant’s Notice of Removal is timely, this filing being made within 30 days of service on Defendant’s copy of the Complaint setting forth the claims for relief upon which the action is based.

4. No previous notice of removal has been filed in this case.

5. By removing this action, DMS does not waive any defense available to it and does not concede the truth of any allegation contained in the Complaint.

**II. REMOVAL IS PROPER**

6. Removal to this Court is appropriate because DMS is entitled to exercise such a statutory right in accordance with 28 U.S.C. § 1441(a) and (b) as a result of diversity jurisdiction pursuant to 28 U.S.C. § 1332. The requirements for diversity jurisdiction are met here because this is a civil action with an amount in controversy exceeding \$75,000.00, exclusive of interests and costs, and is between citizens of different states.

7. The first requirement for diversity jurisdiction is that the amount in controversy must exceed the sum of \$75,000.00, exclusive of interests and costs. 28 U.S.C. § 1332(a).

1 Removal is proper if, from the allegations of the Complaint and the Notice of Removal, it is more  
 2 likely than not that the claims exceed \$75,000.00, exclusive of interests and costs. *See Sanchez v.*  
 3 *Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

4 8. Here, Plaintiffs are suing under Cal. Bus. & Prof. Code § 17529.5, claiming  
 5 damages against DMS in the aggregate amount of \$282,000.00. Plaintiff Judge alone seeks  
 6 \$79,000.00. *See* Complaint ¶ Prayer for Relief, subparagraph B.

7 9. In addition, Cal. Bus. & Prof. Code § 17529.5(b)(1)(C) provides for a potential  
 8 award of attorneys' fees to Plaintiffs. As such, the statutory attorneys' fees which Plaintiffs seek  
 9 alone would likewise satisfy the \$75,000.00 threshold for diversity jurisdiction. *See e.g., Balsam v.*  
 10 *Trancos*, 203 Cal. App. 4th 1083 (Cal. App. Ct. 2012) (awarding plaintiff attorneys fees in the  
 11 amount of \$81,900.00). The court can consider future attorneys' fees, not just attorneys' fees as of  
 12 the date of removal, when calculating a reasonable estimate of a plaintiff's attorneys fees. *See*  
 13 *Fritsch v. Swift Trans. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018); *Galt G/S v. JSS*  
 14 *Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998) ("[W]here an underlying statute authorizes  
 15 an award of attorneys' fees, either with mandatory or discretionary language, such fees may be  
 16 included in the amount in controversy.").

17 10. Thus, the amount in controversy exceeds \$75,000.00 for the subject claims. To the  
 18 extent that any individual plaintiff other than Judge claims that the monetary threshold is not met  
 19 with respect to his/her respective claim, notwithstanding the aforementioned argument concerning  
 20 the claim for attorney's fees, the Court can and should nevertheless exercise supplemental  
 21 jurisdiction over such claims because these plaintiffs allegedly received similar emails thus  
 22 forming part of the same case or controversy. 28 U.S.C. § 1367.

### 23 **Complete Diversity Exists**

24 11. Complete diversity of citizenship exists because none of the defendants are citizens  
 25 of the state of citizenship of any plaintiff. *See* 28 U.S.C. § 1332(a)(2).

26 12. The five individual plaintiffs all reside in California. *See* Complaint ¶¶ 8-13.

1           13. Defendant DMS is a Delaware limited liability company with its principal place of  
2 business in Florida.

3           14. DMS has two members, CEP V DMS US Blocker Co., a Delaware corporation  
4 with a principal place of business in Toronto, Canada, and Prism Data, LLC, which has three (3)  
5 individual members: Fernando Borghese (a citizen of the state of Pennsylvania), Joe Marinucci (a  
6 citizen of the state of Florida), and Luis Ruelas (a citizen of the state of New Jersey).

7           15. Defendant Bilco Media is a non-California citizen entity and Plaintiffs have not  
8 filed any paperwork indicating that it has been served with the Complaint.

9           16. Defendant Allan Hughes is a citizen of Canada and Plaintiffs have not filed any  
10 paperwork indicating that he has been served with the Complaint.

11           17. The citizenship of the “Doe” defendants is disregarded for purposes of removal.  
12 *See* 28 U.S.C. § 1441(b)(1); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

13           18. Complete diversity exists among the he parties and the amount in controversy  
14 requirements for jurisdiction under Section 1332(a) are satisfied. As such, this action may be  
15 removed. *See* 28 U.S.C. § 1441(b).

### 16 **III. VENUE**

17           19. Venue is proper in this Court, in that this is the Court for the district and division  
18 embracing the place where the action is pending in state court (San Francisco County). 28 U.S.C.  
19 § 1441(a).

### 20 **IV. NOTICE AND SERVICE**

21           20. Contemporaneously with the filing of this Notice of Removal, in accordance with 28  
22 U.S.C. § 1446(b), Defendant is providing Plaintiffs, through their counsel, with written notice of the  
23 removal.

24           21. Further, Defendant is also concurrently filing a copy of this Notice of Removal with  
25 the Clerk of the Superior Court of the State of California for the County of San Francisco, pursuant  
26 to 28 U.S.C. § 1446(d).

22. Because no other defendant has been served, there is no requirement to obtain their consent to this removal or their joinder in it.

**V. NO WAIVER OF DEFENSES**

23. By removing this action, DMS does not waive any defenses available to it, including but not limited to those under Fed. R. Civ. P. 12(b) and 12(c). DMS believes that the claims asserted are meritless, and reserves all of its rights. By way of setting forth the bases for removal in this Notice, DMS in no way concedes the truth of the allegations in the Complaint. DMS does and will dispute the claims in their entirety.

**VI. CONCLUSION**

24. Because this civil action is one for which diversity jurisdiction exists, Defendant respectfully requests that this Court permit removal of a case over which it has original jurisdiction.

**WHEREFORE**, Defendant DMS removes the above action to this Court.

Dated: January 22, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

/s/ Jay T. Ramsey

JAY T. RAMSEY

KLEIN MOYNIHAN TURCO LLP

Neil Asnen (*pro hac vice* to be filed)

Attorneys for Defendants

DIGITAL MEDIA SOLUTIONS LLC